



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 22, 2022

IN THE MATTER OF:

Appeal Board No. 621565

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 621564 and 621565, the claimant appeals from the decisions of the Administrative Law Judge filed February 8, 2022, which denied the claimant's application to reopen A.L.J. Case Nos. 121-08186 and 121-08187 and continued in effect the initial determinations disqualifying the claimant from receiving benefits, effective April 23, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to April 23, 2021 cannot be used toward the establishment of a claim for benefits; and reducing the claimant's right to receive future benefits by four effective days on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant appeared at a hearing held on October 1, 2021, but he did not proceed because he was in a car during a break from work. The claimant could not afford to miss a day of work, and the car was the quietest place the claimant could get to away from the worksite. The Administrative Law Judge decided not to proceed with the hearing because the claimant was unable to give his undivided attention.

The Judge issued a "Claimant Default in Proceeding" decision on October 1, 2021. The decision advised the claimant that he could apply to reopen within a reasonable time. The claimant submitted his application to reopen, by email, on December 16, 2021.

OPINION: The credible evidence establishes that the claimant appeared at the hearing held on October 1, 2021, but did not proceed because the Judge advised the claimant that the claimant was unable to give his undivided attention. The claimant needed to be at work, and the quietest place he could find away from the worksite was inside a car. The claimant subsequently applied to reopen on December 16, 2021. We find that the claimant has shown good cause to excuse his default. In addition, his application to reopen, which was submitted two-and-a-half months after the default decision, was made within a reasonable time. Accordingly, we conclude that the claimant's application to reopen is granted.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the initial determinations of misconduct and willful misrepresentation, as no testimony or evidence was taken on these issues. The parties shall be afforded an opportunity to present testimony and evidence on these issues and shall be afforded an opportunity to cross-examine opposing witnesses.

DECISION: The decisions of the Administrative Law Judge, insofar as they denied the claimant's application to reopen A.L.J. Case Nos. 121-08186 and 121-08187, are reversed.

The decisions of the Administrative Law Judge, insofar as they continued in effect the initial determinations of misconduct and willful misrepresentation, are rescinded.

The claimant's application to reopen A.L.J. Case Nos. 121-08186 and 121-08187 is granted.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of misconduct and willful misrepresentation, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of misconduct and willful misrepresentation, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER